

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Civil Action No. 5:20-cv-674

AMY MCNISH,

Plaintiff,

v.

OPAL HOTELS RDU AIRPORT LLC,
MITAL M. PATEL, RAVI DESAI, and
BARBARA CHRISTIAN,

Defendants.

NOTICE OF REMOVAL

COME NOW Defendants, OPAL HOTELS RDU AIRPORT LLC, MITAL M. PATEL, RAVI DESAI, and BARBARA CHRISTIAN (*collectively*, “Defendants”), by and through their undersigned attorneys, and hereby petition this Court for the removal of this matter from the Superior Court of Wake County, North Carolina, to the United States District Court for the Eastern District of North Carolina.

Defendants respectfully submit the following grounds in support of removal:

1. On or about November 9, 2020, the plaintiff filed a *pro se* Complaint in the Superior Court of Wake County, North Carolina, entitled *Amy McNish, Plaintiff, v. Opal Hotels RDU Airport LLC, Mital M. Patel, Ravi Desai, and Barbara Christian, Defendants*, Civil Action No. 20 CVS 12696. *See* Complaint, *attached as Exhibit 1*. Plaintiff used Form Pro Se 7 Complaint for Employment Discrimination. *See* Complaint, Ex. 1 at 1-6.

2. To the Complaint, Plaintiff attached a Dismissal and Notice of Rights issued on August 12, 2020 by the U.S. Equal Employment Opportunity Commission Raleigh Area Office, her original Charge of Discrimination No. 433-2020-01961, and other documents, which are attached as Exhibit 2.

3. Plaintiff also filed a Form A440 Summons in a Civil Action listing all Defendants, at the following addresses: 5540 McNeely Drive, Suite 301, Raleigh, NC 27612 and Country Inn & Suites RDU, 201 Airgate Drive, Morrisville, NC 27560. See Summons, attached as Exhibit 3. Plaintiff also filed a Form JS 44 Civil Cover Sheet, which is attached as Exhibit 4. Plaintiff, who is proceeding *pro se*, also filed a Petition to Proceed as an Indigent on North Carolina Form AOC-G-106, which is attached as Exhibit 5.

4. Plaintiff mailed a copy of Exhibits 1-5 to the undersigned attorney, Katie Weaver Hartzog, who represented Defendants in the subject EEOC proceedings, by certified mail, which was delivered on November 13, 2020. Ms. Hartzog is not authorized to accept service for Defendants and notified Ms. McNish accordingly on December 8, 2020 and December 10, 2020. A copy of the email correspondence informing Ms. McNish that Ms. Hartzog was not authorized to accept service is attached as Exhibit 6. As shown in Exhibit 6, Ms. McNish also emailed copies of the pleadings to Defendants on November 13, 2020.

5. Defendants have not been served with process pursuant to the North Carolina or Federal Rules of Civil Procedure. Defendants have thirty days from the date of service to remove this matter, pursuant to 28 U.S.C. § 1446(b)(1) and Rule 6 of the Federal Rules

of Civil Procedure. As no service has been effected, Defendants' deadline has not yet begun to run, and this removal is timely.

6. This Court has removal jurisdiction over this case because this is a civil action with original jurisdiction in the federal courts, pursuant to 28 U.S.C. §§ 1331 and 1441(a). Plaintiff brings claims against all Defendants pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* for alleged employment discrimination and alleges that Plaintiff is entitled to recover equitable and other relief pursuant to 42 U.S.C. § 2000e(5)(g). *See* Complaint, Ex. 1 at 3-5. Accordingly, these are claims "arising under the Constitution, laws, or treaties of the United States," over which the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.

7. This Court is the proper venue for removal of this action under 28 U.S.C. § 1446(a), because it is located in the District where the State Court action was pending.

8. Documents associated with Case No. 20 CVS 12696, of which these Defendants are in possession, are attached hereto as Exhibits 1-5.

9. A copy of this Notice of Removal will be filed with the Clerk of Court for the Superior Court of Wake County, North Carolina, and served on Plaintiff. A copy of said Notice of Removal to Federal Court is attached as Exhibit 7.

WHEREFORE, Defendants respectfully request that the above action now pending in the Superior Court of Wake County, North Carolina, General Court of Justice, be removed to this Court.

This the 14th day of December, 2020.

HARTZOG LAW GROUP LLP

/s/ Katie Weaver Hartzog

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification to all registered CM/ECF participants, and by depositing a copy of the same in the United States Mail, postage prepaid and addressed to:

Amy McNish
1118 Langstonshire Lane
Morrisville, NC 27560
Pro Se Plaintiff

This the 14th day of December, 2020.

HARTZOG LAW GROUP LLP

/s/ Katie Weaver Hartzog
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